

CAHILL GORDON & REINDEL LLP
32 OLD SLIP
NEW YORK, NY 10005

DANIEL R. ANDERSON
HELENE R. BANKS
ANIRUDH BANSAL
DAVID L. BARASH
LANDIS C. BEST
BRADLEY J. BONDI
BROCKTON B. BOSSON
JONATHAN BROWNSON *
DONNA M. BRYAN
JOYDEEP CHOUDHURI *
JAMES J. CLARK
CHRISTOPHER W. CLEMENT
LISA COLLIER
AYANO K. CREED
PRUE CRIDDLE ±
SEAN M. DAVIS
STUART G. DOWNING
ADAM M. DWORKIN
ANASTASIA EFIMOVA
JENNIFER B. EZRING
HELENA S. FRANCESCHI
JOAN MURTAGH FRANKEL

JONATHAN J. FRANKEL
ARIEL GOLDMAN
PATRICK GORDON
JASON M. HALL
STEPHEN HARPER
WILLIAM M. HARTNETT
NOLA B. HELLER
CRAIG M. HOROWITZ
TIMOTHY B. HOWELL
DAVID G. JANUSZEWSKI
ELAI KATZ
JAKE KEAVENY
BRIAN S. KELLEHER
RICHARD KELLY
CHÉRIE R. KISER ‡
JOEL KURTZBERG
TED B. LACEY
MARC R. LASHBROOK
ALIZA R. LEVINE
JOEL H. LEVITTIN
GEOFFREY E. LIEBMANN
BRIAN T. MARKLEY

TELEPHONE: (212) 701-3000
WWW.CAHILL.COM

1990 K STREET, N.W.
WASHINGTON, DC 20006-1181
(202) 862-8900

CAHILL GORDON & REINDEL (UK) LLP
20 FENCHURCH STREET
LONDON EC3M 3BY
+44 (0) 20 7920 9800

WRITER'S DIRECT NUMBER

MEGHAN N. McDERMOTT
WILLIAM J. MILLER
EDWARD N. MOSS
NOAH B. NEWITZ
WARREN NEWTON §
DAVID R. OWEN
JOHN PAPACHRISTOS
LUIS R. PENALVER
KIMBERLY PETILLO-DÉCOSSARD
SHEILA C. RAMESH
MICHAEL W. REDDY
OLEG REZZY
THORN ROSENTHAL
TAMMY L. ROY
JONATHAN A. SCHAFFZIN
ANDREW SCHWARTZ
DARREN SILVER
JOSIAH M. SLOTNICK
RICHARD A. STIEGLITZ JR.
ROSS E. STURMAN
SUSANNA M. SUH
ANTHONY K. TAMA

JOHN A. TRIPODORO
GLENN J. WALDRIP, JR.
HERBERT S. WASHER
MICHAEL B. WEISS
DAVID WISHENGRAD
C. ANTHONY WOLFE
COREY WRIGHT
ELIZABETH M. YAHL
JOSHUA M. ZELIG

* ADMITTED AS A SOLICITOR IN
ENGLAND AND WALES ONLY
± ADMITTED AS A SOLICITOR IN
WESTERN AUSTRALIA ONLY
‡ ADMITTED IN DC ONLY
§ ADMITTED AS AN ATTORNEY
IN THE REPUBLIC OF SOUTH AFRICA
ONLY

(212) 701-3207

October 18, 2022

Re: *In re Foreign Exchange Benchmark Rates Antitrust
Litigation*, Case No. 1:13-cv-07789-LGS

Dear Judge Schofield,

Following up on today's charge conference, the Credit Suisse Defendants respectfully request a balancing instruction, set forth below, before the final paragraph of the Court's instruction on Single or Multiple Conspiracies.

The Court will instruct the jury on the concept of *respondeat superior*, specifically that "[t]hrough its employees, ... an entity is capable of conspiring with other persons or other entities." In addition, the verdict sheet, at question 4B, will ask the jury to identify "every bank" that participated in the conspiracy they find.

Accordingly, if the jury concludes that a Credit Suisse trader conspired in a chatroom with one trader from, for example, Bank of America (BoFA), they will mark BoFA as a co-conspirator in response to question 4B. However, as the charge and verdict sheet are currently drafted, if the jury then finds that a *separate trader* at BoFA was involved in multiple other, unrelated agreements with other traders at other banks, Credit Suisse could be found to have conspired with those other banks as well, despite the lack of evidence to support such a finding.

To avoid this risk, the defense respectfully requests an instruction to the following effect, just before the final paragraph in the Single or Multiple Conspiracies section:

In addition, the fact you find one of a bank's employees is part of a conspiracy, does not necessarily mean that all of the bank's employees are conspirators, or part of the same conspiracy.

CAHILL GORDON & REINDEL LLP

-2-

See AD/SAT, Division of Skylight, Inc. v. Associated Press, 181 F.3d 216, 234 (2d Cir. 1999) (“[A]lthough the nature of trade associations is such that they are frequently the object of antitrust scrutiny, every action by a trade association is not concerted action by the association’s members. . . . [A]n antitrust plaintiff must present evidence tending to show that association members, in their individual capacities, consciously committed themselves to a common scheme designed to achieve an unlawful objective.” (citation omitted)); Thomas V. Vakerics, *Antitrust Basics* § 6.10 (“In situations where a trade association, its officers, employees or members are found to have violated the antitrust laws, membership in the association will not automatically involve all members in the violation. There must, instead, be some evidence of actual knowledge of, and participation in, the illegal scheme in order to establish a violation of the antitrust laws by a particular association member.”) (cited with approval in *AD/SAT*, 181 F. 3d at 234).

Respectfully submitted,

CAHILL GORDON & REINDEL LLP

/s/ Anirudh Bansal

Herbert S. Washer

Anirudh Bansal

Jason M. Hall

Edward Moss

Tammy L. Roy

32 Old Slip

New York, New York 10005

Telephone: (212) 701-3000

Facsimile: (212) 269-5420

hwasher@cahill.com

abansal@cahill.com

jhall@cahill.com

emoss@cahill.com

troy@cahill.com

*Attorney for Defendants Credit Suisse Group
AG, Credit Suisse AG, and Credit Suisse
Securities (USA) LLC*

Honorable Lorna G. Schofield
United States District Judge

CAHILL GORDON & REINDEL LLP

-3-

Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Via ECF